



## ENVIRONMENTAL PROTECTION AGENCY

[FRL- 9717-6]

### Notice of Approval of Title V Operating Permit for Peabody Western Coal Company

(Navajo Nation EPA No. NN-OP 08-010)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action.

**SUMMARY:** This notice announces that the Navajo Nation Environmental Protection Agency (“NNEPA”), acting with authority from the United States Environmental Protection Agency (“EPA”) delegated pursuant to 40 C.F.R. Part 71, has issued a federal Clean Air Act Title V operating permit to Peabody Western Coal Company (“Peabody”) governing air emissions from Peabody’s mining operation at the Kayenta Mine, Black Mesa Complex in Arizona on the reservation of the Navajo Nation.

**DATES:** NNEPA, acting as EPA’s delegate, issued notice of a final permit decision on May 21, 2012. Certain portions of the permit became effective on April 14, 2011. All other provisions of the permit became effective on March 13, 2012 after the Environmental Appeals Board denied Peabody’s petition for review. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit by [insert date 60 days after publication in the Federal Register].

**ADDRESSES:** The documents relevant to the above-referenced permits are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. To arrange for viewing of these documents call Roger Kohn at (415) 972-3973.

**FOR FURTHER INFORMATION:** Roger Kohn, Air Division Permits Office, U.S.

Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Charlene Nelson, Navajo Nation Air Quality Control Program, Operating Permits Section, P.O. Box 529, Fort Defiance, AZ 86504.

Anyone who wishes to review the EPA Environmental Appeals Board decision described below can obtain it at <http://www.epa.gov/eab/>.

*Notice of Final Action and Supplementary Information:* NNEPA issued notice of a final revised permit decision to Peabody for its surface coal mining operations on the Navajo reservation, Title V Operating Permit No. NN-OP 08-010 (“Peabody permit”), on May 21, 2012. The Peabody revised permit was initially issued by NNEPA on April 14, 2011. EPA’s Environmental Appeals Board (“EAB”) received a petition for review by Peabody of this revised permit on May 16, 2011. On March 13, 2012, the EAB issued an order denying review of the petition. *See In re Peabody Western Coal Company*, CAA Appeal No. 11-01 (EAB March 13, 2012) (Order Denying Petition for Review). The petition challenged, among other things, NNEPA’s use of tribal law in issuing the permit and inclusion in the permit for conditions III(B), IV(C), IV(D), IV(E), IV(G), IV(H), IV(I), IV(K), IV(L), and IV(Q) tribal law citations in parallel with the federally enforceable 40 C.F.R. Part 71 requirements. After the EAB’s denial of review, Peabody filed a motion with the EAB for reconsideration, which was denied on April 17, 2012. Pursuant to 40 C.F.R. 71.11(l)(5) and 124.19(f)(1), final agency action by EPA has

occurred because agency review procedures before the EAB have been exhausted and NNEPA has issued a final permit decision.

Dated: August 8, 2012.

Deborah Jordan, Director,  
Air Division,  
Region IX.

Publication Date: 08/22/2012]

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